



\$~97

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 2954/2024 & CRL.M.A. 28863/2024**
M/S KAKA GOLD LLPPetitioner

Through: Ms. Malvika Trivedi, Senior
Advocate with Mr. Nalin Bajaj, Ms.
Srishty Jaura, Mr. Sujal Gupta, Mr.
Prashant Singh, Mr. Siddharth Kumar
Jha, Mr. Shailendra Slaria, Ms. Purvi
Garg and Mr. Shivam Mishra,
Advocates.

versus

STATE OF NCT OF DELHI THROUGH ACP & ORS.

.....Respondents

Through: Mr. Amol Sinha, ASC for the State
with Mr. Kshitiz Garg, Mr. Ashvini
Kumar and Ms. Chavi Lazarus,
Advocates with Insp. Harish Chandra,
EOW.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

%

25.10.2024

CRL.M.A. 28864/2024

Exemption granted, subject to just exceptions.

The application stands disposed of.

W.P.(CRL) 2954/2024

By way of the present petition filed under Article 226 of the Constitution of India read with section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner impugns 03 notices, all dated 12.09.2024, purported to have been issued by respondent No.1 under sections 91/160 of the Code of Criminal Procedure ('Cr.P.C.') to HDFC Bank Ltd. and Kotak Mahindra Bank, where the petitioner



hold accounts, directing the banks to create a lien over those accounts to the extent mentioned in the 03 notices.

2. At the outset, Ms. Malvika Trivedi, learned senior counsel appearing for the petitioner submits that though the petitioner had impugned 03 notices, by inadvertence, a copy of the 1st notice dated 12.09.2024 addressed by respondent No.1 to HDFC Bank Ltd. was not filed on record and only a typed copy thereof was filed. A copy of the said notice has been handed-up in court; and since the notice is admitted by respondent No.1, the same is taken on record.
3. Ms. Trivedi explains, that the impugned notices have been issued in furtherance of investigation in case FIR No.66/2024 dated 07.02.2024 registered under sections 420/406/34 of the Indian Penal Code, 1860 at P.S.: Greater Kailash, New Delhi. She points-out that, from a perusal of the subject FIR it will be seen that the petitioner is neither an accused, nor otherwise named as having committed any infraction, in the subject FIR.
4. Learned senior counsel submits. that the petitioner is engaged in the business of trading in gold bullion; and in the usual course of its business, the petitioner has had several transactions with an entity called 'Asli Sona', which entity is the main subject matter of investigation in the subject FIR.
5. Ms. Trivedi argues, that the impugned notices have been issued under sections 91/160 of the Cr.P.C. but those provisions do not empower an Investigating Officer (I.O.) to seek a lien over money lying in a bank account. Senior counsel points-out, that the power to do so is contained in section 102(3) of the Cr.P.C., which however also



provides that the custody of a property seized as part of an investigation may be handed-back to a person on his executing a bond, undertaking to produce the property before the court as and when required.

6. Learned senior counsel submits, that in view of the above statutory provision, in the present matter, instead of creating a lien over 03 bank accounts held by the petitioner, especially considering that the petitioner has nothing to do with the offence under investigation, the I.O. should have accepted a bond of undertaking from the petitioner instead of creating a lien over the bank accounts, through which accounts the petitioner conducts its usual and ordinary financial transactions in the course of its business.
7. Issue notice.
8. Mr. Amol Sinha, learned ASC (Criminal) appears on behalf of the respondents on advance copy; accepts notice; and submits that of the 03 impugned notices, notice dated 12.09.2024 issued to Kotak Mahindra Bank (a copy of which is appended at page 103 of the petition) has since been withdrawn; and therefore only the 02 notices dated 12.09.2024 issued to HDFC Bank Ltd. now remain, by which the I.O. has directed that a lien be created over the petitioner's account as detailed in the notices to the tune of Rs.1.15 crore and Rs. 98 lacs respectively.
9. Mr. Sinha also clarifies, that though the notices may have been titled under sections 91/160 of the Cr.P.C., the body of the notices carries a clear reference to section 102 of the Cr.P.C. which is therefore the power that the I.O. was invoking.



10. Learned ASC submits that a lien is sought to be created over the aforesaid amounts, since, as per the allegations in the subject FIR, gold of that value was purported to be have been sold by the petitioner to 'Asli Sona' and money received as sale consideration, but it turns-out that no gold was actually delivered to the buyer.
11. Though Ms. Trivedi has also made other submissions impugning the subject notices, on instruction of the Investigating Officer (I.O.) who is present in court, Mr. Sinha submits that the I.O. would be willing to accept a bond duly executed on behalf of the petitioner to the tune of Rs.2.13 crores (*i.e.*, Rs. 1.15 crore + Rs.98 lacs) containing the requisite undertaking to produce that sum of money as and when required in the course of trial.
12. In view of what has been submitted on behalf of the State, on instructions Ms. Trivedi submits, that the petitioner would be willing to furnish the requisite bond in the sum of Rs.2.13 crores, subject to the respondent withdrawing the 02 notices that remain pending, as detailed above.
13. In view of the above, the present petition is disposed-of, directing the petitioner to furnish to the I.O. a bond in the sum of Rs.2.13 crore containing the requisite undertaking as referred to above, no later than 03 weeks from today, *subject to which* the 02 notices dated 12.09.2024 addressed by the respondent to HDFC Bank Ltd., Crawford Market, Ashoka Shopping Centre, Mumbai-400001 (copies of which are appended at pages 99 and 102 of the petition) shall stand cancelled and withdrawn by the respondent, under written intimation to the said bank.



14. The petition is disposed-of in the above terms.
15. Pending applications, if any, also stand disposed-of.
16. Needless to add that nothing in this order shall restrict the right of the petitioner to seek such remedies before the learned trial court, as may be available to the petitioner, in accordance with law.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 25, 2024

SS